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Supreme Court, U.S.
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No. 08-62

IN THE
Supreme Court of the United States

RAYMOND CHARLES PERSIK, et. al.,
Petitioner(s)

v.

TUCCI LEARNING SOLUTIONS, INC.,
and

HEA-JUNG ATKINS, LOCAL DIRECTOR, U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, SAN JOSE LOCAL OFFICE - 556
Respondents

On Petition For Writ of Certiorari
To The U.S. Court of Appeals for the 9th Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS FOR THE U.S. SUPREME COURT

1. On February 15, 2008, the 9th Circuit dismissed the petitioner's appeal for allegedly lack of jurisdiction; however, petitioner maintains that the Court failed to properly recognize the Soldier's and Sailor's Civil Relief Act of 1940, or the SSCRA, 50 USCS §§ Appx 501, et. seq., specifically 50 USCS §§ Appx 516 and§§ 525; Will this Court issue a formal ruling pertaining to the use of the SSCRA in filing any action in any court of the United States?

2. Since this legal document represents the final case, in a series of 8 years of federal legal work, allegedly originating from the same cause, a wrongful abortion, will this Court open up all previously filed petitions, pursuant to established case law; Thus, will this Court revisit *Persik v. Colorado, infra, Persik v. Colorado State University, infra, Persik v. Manpower Inc., infra, Persik v. Suthers, Colorado Attorney General, et. al., infra* and *Persik v. Group Health Cooperative, Inc., et al, infra?*

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7. U.S. Equal Employment Opportunity Commission Correspondence. Author: Mr. Thomas J. Schlageter. Re: In response to Your Request that the EEOC Overturn "Employment-At-Will" Doctrine. Dtd March 28, 2007. *See* Amnd Cmplnt, Exhibit B

8. U.S. Equal Employment Opportunity Commission, Dismissal and Notice of Rights, San Jose Local Office – 556; 96 North 3rd Street; San Jose, CA 95112, dated 8-29-2006

9. U.S. Equal Employment Opportunity Commission, EEOC Charge 556-2006-00068 filed with San Jose Local Office – 556; 96 North 3rd Street; San Jose, CA 95112, dated June 21, 2006

10. U.S. Equal Employment Opportunity Commission, EEOC Questionnaire filed with San Jose Local Office – 556; 96 North 3rd Street; San Jose, CA 95112, dated January 23, 2006

BASIS FOR JURISDICTION OF THE UNITED STATES SUPREME COURT

1. The U.S. Court of Appeals for the 9th Circuit denied the petitioner's appeal on February 15, 2008, *infra* at A-1.[1]

2. U.S. Supreme Court Rule 13 allows for 90 days to file a Petition for Writ of Certiorari. In accordance with Rule 13 (3), "The time to file a petition for a writ of certiorari runs from the date of entry of judgment or order sought to be reviewed, and not from the issuance date of the mandate..." Thus, this petition is timely filed on, or before, Thursday, May 15, 2008.

3. The United States Supreme Court can review this decision pursuant to U.S. Supreme Court Rule 10(a), if: "a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same

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[1] The Petitioner planned to draft a Motion to Reopen the Case on Sunday, March 9, 2008 prior to leaving for Washington, D.C., to drop off 100 copies, of the previously filed petition for writ of certiorari in *Persik v. Group Health Cooperative, Inc., et al.*, S.Ct. Dkt # 07-1113 (2007), with the members of the United States Senate; however, [Persik] called 9-1-1 to report yet one more SEVERE violation of California Penal Code, § 205, Aggravated Mayhem. The two Concord police officers, answering the call, requested [Persik] undergo a psychiatric evaluation, where the attending psychiatrist cleared [Persik]. [Persik] showed Dr. White the petition, and the pamphlet prepared for the members of the United States Senate which included a proposed amendment eliminating nearly all abortions in the United States.

important matter; ... or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise for the exercise of this Court's supervisory power", and U.S. Supreme Court Rule 10(c)"or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court".

4. The petitioner maintains that no notifications are required by U.S. Supreme Court Rule 29.4(b) or 29.4(c).

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES AND REGULATIONS

1. Pursuant to U.S. Supreme Court Rule 14.1(f) the Appendix, F-1 to F-55 , contains the text of the required provisions. Pursuant to U.S. Supreme Court Rule 33.1(d), "verbatim quotations required under Rule 14.1(f), if set out in the text of the brief rather in the appendix, are also excluded" from the page limit. The petition is within the 9, 000 word length limitation required by U.S. Supreme Court Rule 33.1(g)(i).

2. Amendment XIV, U.S. Constitution. Citizenship; Priviledges and Immunities; Due Process; Equal Protection; Apportionment of Representation; Disqualification of Officers; Public Debt; Enforcement. *See* F-1

3. 10 USCS § 331. Federal aid for State governments.. F-3

4. 10 USCS § 333 (1999) Interference with State and Federal law. F-3

5. 10 USCS § 380. Enhancement of cooperation with civilian law enforcement officials. F-4

6. 10 USCS § 814. Art. 14. Delivery of offenders to civil authorities. F-10

7. 10 USCS § 878. Art. 78. Accessory after the fact. F-5

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STATEMENT OF THE CASE

1. On, or about, January 13, 2005, the petitioner, [Persik], applied for a job, on-line, with Tucci Learning Solutions [TLS], Inc. Specifically, Tucci Learning Solutions, Inc. works with special needs children, and [Persik] has a sister who has been mentally handicapped since birth due to the fact she has only 45 chromosomes. Immediately, the same day, the petitioner received a phone call from a representative of [TLS], *see* Amd Cmplt at 8, ¶ 25b. The petitioner called the next day, and Miss Jane Kim set up an interview at Oakridge Mall in San Jose, CA. [TLS]'s representatives hired [Persik] immediately, and [Persik] stated, when asked, that [he] would like to work with elementary, and pre-elementary aged children. [Persik] was so enthralled, to be returning to teaching, at any level, [he] failed to ask about the pay scale. [Persik] did not obtain [his] pay rate until reviewing [his] first pay stub.

2. [Persik] began employment in early February 2005 with [TLS]. [Persik] was immediately concerned over potential gender discrimination when [he] learned that [he] was assigned to a home with a woman from England. Specifically, [Persik] sensed a "trap or pitfall", as discussed in *Regina v. Michael*, 2 Mood 121, 169 Eng. Rep. R. 48 (1840), based on previous problems with representatives of the British Commonwealth. Additionally, [Persik] felt the employer's failure to employ [him] full-time was a

potential discrimination issue which [he] did not characterize as to the type of discrimination [he] may be dealing with.

3. Prior to experiencing any quantifiable harassment, [Persik]'s employer's representatives, Ms. Rebecca Franklin, and Mr. Pete Polaris, assigned [him] at two new learner's homes; thus, [Persik] now had 4 children to work with ages 3-7; however, [his] total hours were still less than 20 for a given week. Specifically, [Persik] began working with a young boy of 3 years of age, just turning 4. [Persik] feared a potential problem when the learner's mother had company from Colorado during [his] first session alone with the learner. Specifically, the company was from the same small town as a former girlfriend from 1998. Thus, [Persik] feared a potential case of individual, "disparate impact", gender discrimination if the mother, or [TLS], supported the discrimination of a man for the personal favor of a woman.

4. The following fear is not a form of discrimination under any theories known to the petitioner; however, [Persik] alleges that the following issue represents a severe problem within our society. [TLS]'s failure to employ [Persik] full time created an enormous financial problem for [Persik]. Therefore, [Persik] told Ms. Rebecca Frankin that the U.S. Army Reserve Unit was allowing [Persik] to complete Additional Training Assemblies (ATAs) and Readiness Management Assemblies (RMAs) until [his] hours were increased. Next, Mr. Pete Polaris assigned [Persik] to 4 x 1 and 1/2 hour periods for

one of [his] new learners. [Persik]'s gut feeling was that either both of these supervisors resented [his] service in the United States Army Reserve.

5. The most quantifiable form of perceived discrimination occurred at the home of the woman mentioned *supra* at ¶ 3. [Persik] was attending a group therapy session, review session, for one [his] clients, when the mother asked [him] if she "needed to get *Webster* out". [Persik] had been complimented at this home prior to Ms. Rebecca Franklin taking over as the main counselor. Specifically, with no other man present, [Persik] was told that people within the company heard [he] was doing wonderful things with [his] learners. [Persik] perceived the *Webster* comment in a negative light since [he] was in the process of drafting a case against Group Health Cooperative, Inc, Monica McCallie, et. al. over the loss of [his] unborn son to abortion in September 1994. Specifically, [Persik] is referring to *Webster et al. v. Reproductive Health Services*, 492 U.S. 490 (1989).

6. Following [Persik] being dismissed from a 3rd house, after being questioned concerning [his] United States Army ID, and [Persik]'s subsequent response, [Persik] had reason to suspect [he] was being either set up, or severely discriminated against, in an individual disparate impact manner for mixed motives.

7. On Wednesday night, May 11, 2005, [Persik] followed through with the filing of a complaint, in the U.S. district Court for the District of Western

Washington, *Persik, et al. v. Group Health Cooperative Inc., et* al, #C05-CV-00882 (D.W.Wash, 2005) aimed at uncovering the circumstances surrounding the death of [his] unborn son to an abortion in September 1994, and [his] attempt to set a peaceful example on how to deal with people with an opposing view. Furthermore, [Persik] pushed [his] legal opinion that *Roe v. Wade*, 410 U.S. 113 (1973) was open to collateral attack because it was allegedly used in a manner inconsistent with the reason the United States Supreme Court granted women the near unlimited right to an abortion.

8. [Persik] did not have any students on Thursday, May 12, 2005. [Persik] was lead to believe, by an unknown, public librarian, on Sunday, May 15, 2005, in Santa Clara on Homestead, that [he] was being released the following day. On Monday, May 16, 2005, [Persik] was given the signal from Rebecca Franklin, one of [his] supervisors, that something was in fact wrong when she came over to [his] session. On May 17, 2005, [Persik] called a parent to say [he] would be a couple minutes late, and [he] was told that [he] was not to report to the home. [Persik] maintains that the real reason for [his] release is [his] strong stand against the landmark, precedent-setting case of *Roe v. Wade*, 410 U.S. 113 (1973). In five previously filed petition for writ's of certiorari[2],

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[2] (1) *Persik v. The People of Colorado*, 538 U.S. 995 (#02-875, 537 U.S. 1190, 2002), *Persik v. Colorado State University*, 542 U.S. 916 (#03-1278, 541 U.S. 990, 2004), *Persik v. Manpower, Inc.*, 542 U.S. 960 (#03-1473, 541 U.S. 1086, 2004), *Persik v. Suthers, et. al.*, 549 U.S. ___ (# 06-471, 549 U.S. ___ , 2007) and *Persik v. Group Health Cooperative, Inc., et al.*, 549 U.S. ___ (#07-1113, 2007).

and four petitions for rehearing, Mr. Persik argued Defendant Mrs. Monica McCallie, et. al., utilized the procedure of abortion in a manner not intended by this Court by ending Angel Persik's life, [Persik]'s unborn son, on September 27, 2007. Thus, [Persik] now has added proof. In fact, [Persik] maintains that Ms. Morrow, and Mrs. McCallie, et al., only had interests in utilizing [Persik] to show the effects of discrimination. Realistically, it is [Persik] that experienced the discrimination. Foremost, religious discrimination for remaining faithful to [his] personal, religious view regarding the protection of human life, and secondly, gender discrimination, because numerous women were in fact discriminating against [Persik], as observed here, based on [his] gender.

9. [Persik] filed an Intake Questionnaire, with the EEOC in San Jose, CA, on January 23, 2006, following continuing [his] appeal in a separate action to the 9th Circuit, on the abortion issue. [Persik] later amended this questionnaire; however, [Persik] maintains that a rapid handling of this charge would have resulted in a valid charge being timely filed with the EEOC and subsequently the DEH.

10. [Persik] participated in a phone interview on April 17, 2006, from the Manpower, Inc, on site manager's office, at Abbott Labs, Inc. in Santa Clara, California where [he] maintains discrimination again continued. The Manpower staff representative released [him] again from a 6 month assignment

following [Persik]'s phone interview with the EEOC. The release came the same afternoon. [Persik] considers this to be yet one more federal violation of 18 USCS § 1512 et seq.

11. The EEOC officially filed a charge on June 21, 2006, and it is simultaneously filed with the DEH. However, [Persik] has case law that [he] would like to one day argue that clearly states the Intake Questionnaire filing date is used as the filing date if a charge is subsequently filed, *see Persik v. Manpower, supra.*

12. The EEOC dismissed the charge on August 29, 2006, and [Persik] filed a case on the 90th day following receiving the dismissal of the charge, December 1, 2006. [Persik] later filed a police report with San Jose Police department alleging an attempt on [his] life prior to [his] turning in an extension to file added information with the EEOC; thus, [Persik] did not obtain the Notice of Dismissal as early as the item may have arrived in [his] United States Post Office Box.

13. [Persik] filed a motion to relate all cases on March 27, 2007 which Judge Whyte later denied on April 20, 2007, *infra* at D-4

14. [Persik] participated in a conference on June 1, 2007 where Judge Whyte stated, off the record, that he would grant [Persik] the opportunity to amend [his] complaint. [Persik] planned on filing an amendment prior to Defendant [TLS] filing a motion for dismissal, and [he] failed to do so.

15. [Persik] complied with Judge Whyte's Order to file an amended complaint by June 11, 2007, and the lower court clerk's office refused to issue summons to serve the amended complaint. Additionally, the clerk's office stated that [Persik] would have to wait until the Judge issued an order granting [his] motion for leave to amend the complaint. Judge Whyte did order the amended complaint filed on July 3, 2007, and he attached a copy to the order in D-1, and he considered this service on the two defendants.

16. Judge Whyte dismissed the complaint against [TLS] in [his] July 6, 2007 order, *see* B-10. Prior to court, on August 3, 2007, [Persik] only responded to [Atkin]'s Motion to Dismiss due to the above mentioned fact concerning Judge Whyte's order. Finally, Judge Whyte dismissed the case on August 7, 2007 against both defendants. It is unclear why the initial order, at B-10, was not recognized by the Judge, in the Court, or in the August 7, 2007 order.

17. [Persik] filed a timely appeal, IAW the SSCRA, on November 21, 2007. [Persik] further filed a memorandum, with the Court, regarding [his] utilization of the SSCRA, on December 17, 2007.

18. On February 15, 2007, GRABER, CLIFTON, and BEA, 9th Circuit Judges, dismissed [Persik]'s appeal via an ORDER.

19. The 9th Circuit Clerk, Ms. Lee-Ann Collins, signed the MANDATE on March 11, 2008.

20. Thus, the petition for writ of certiorari is timely filed if filed on, or before, May 15, 2008.

ARGUMENT

Part I. On February 15, 2008, the 9th Circuit dismissed the petitioner's appeal for allegedly lack of jurisdiction; however, petitioner maintains that the Court failed to properly recognize the Soldier's and Sailor's Civil Relief Act of 1940, or the SSCRA, 50 USCS §§ Appx 501, et. seq., specifically 50 USCS §§ Appx 516 and§§ 525; Will this Court issue a formal ruling pertaining to the use of the SSCRA in filing any action in any court of the United States?

1. For simplicity, [Persik] will place the text of [his] December 17, 2007 letter to [TLS] here. [Persik] maintains that this memorandum expresses [his] personal reasons for requesting the 9th Circuit staff abide by the mandatory requirements of 50 USCS Appx §§ 516 and §§ 525. However, on a broader scope, this Court should formalize a ruling in this matter to protect all of our military forces who serve in the United States Reserve System or United States Army or Air National Guards. A reserve, or guard member has to balance his or her life against all the other life challenges that an ordinary citizen faces; however, in addition to these ordinary, or extraordinary challenges, he, or she, often has to perform duties, be they a couple days, a couple weeks for annual training, or a deployment, where the decision making is not in his, or her, hands. Thus, the added flexibility of the SSCRA's provisions serve to return a little bit of flexibility to the soldier's

personal life which he, or she, relinquished to serve the United States Government.

2. On 18 February 2004, [Persik] drafted a "MOTION DIRECTING THE CLERK TO FILE THE PETITION FOR CERTIORARI" in *Persik v. Colorado State University*, 542 U.S. 916 (#03-1278, 541 U.S. 990, 2004). This document explained the correct utilization of the Soldier's and Sailor's Civil Relief Act (SSCRA) of 1940, 50 USCS Appx §§ 501 et. seq. In the end, Mr. Atkins, of the U.S. Supreme Court staff, allowed the filing of the petition for writ utilizing the provisions of the SSCRA. For simplicity, [Persik] clarified the most important parts of this motion to the 9th Circuit on December 17, 2007.

a. Court's jurisdiction: 50 USCA Appx §§ 512 Territorial application; jurisdiction of courts; form of procedure: "(2) When under this Act [50 USCS Appx. §§ 501 et. seq.] any application is required to be made to a court in which no proceeding has already commenced with respect to the matter, such application may be made to any court". The action against defendant [TLS] et. al. is a new action in this Court. "SSCRA does not limit jurisdiction of federal courts, but merely gives procedural right to class of litigants and, ..." *Johnson v. Burken*, 930 F.2d 1202 (7th Circ, 1991).

b. Volunteer duty: In Contemporary Applications of the Soldiers' and Sailors Civil Relief Act, by Major James P. Pottorff, 132 Mil. L. Rev. 115, 118 (1991), Major Pottorf states: "the SSCRA makes

no distinction between those who volunteer for active service and those who involuntarily are called from the Reserve components".

c. 50 USCS Appx §§ 525: This section serves to stop the 60 day clock afforded the appellant in this case, since the case involves a federal defendant. "Purpose of 50 USCS Appx § 525 is to extend time in which action could be brought by or against person in military service", *Van Heets v. Veech*, 156 A2d 301 (58 NJ Super 427, 1959).

d. 50 USCS Appx §§ 516: This section serves to stop the clock on the receipt of such orders. For simplicity, and uniformity, Mr. Persik argued the U.S. Supreme Court utilize the publication date of the orders. 50 USCS Appx §§ 516 states:

"Any person who has been ordered to report for ..., and any member of the reserve component of the Armed Forces who is ordered to report for military service shall be entitled to such relief and benefits during the period beginning on date of receipt of such order and ending on the date upon which such member reports for military service or the date on which the order is revoked, whichever is earlier."

It is imperative for this Court to understand that the individual soldier in many army reserve units, knows the date of military orders, in advance of the orders being published or received. Many soldiers file a document called a "Request for Orders", or "RFO" for dates of voluntary duty prior to

duty at either their own request or the request of their chain of command.

3. Thus, applying 50 USCS Appx §§ 512, §§ 516 and §§ 525, in this case, coupled with the 60 day filing deadline established by Federal Rules of Appellate Procedure, F.R.A.P., Rule 4 (a)(1)(B), the Appellant, Mr. Persik, states the correct filing deadline is 21 November 2007.

a. Pursuant to 50 USCS Appx §§ 516, Order Number 039931, dated 23 July 2007, legally serves to treat Judge Whyte's August 7, 2007 order as if Judge Whyte filed the order on 27 August 2007. On 27 August 2007, 50 USCS Appx §§ 525 again stops the clock until the conclusion of duty on 29 August 2007. Thus, Judge Whyte's order is essentially dated 29 August 2007.

b. F.R.A.P., Rule 4(a)(1)(B) allows for 60 days to file an appeal "When the United States or its officer or agency is a party, the notice of appeal may be filed by any party within 60 days after the judgment or order appealed from is entered".

c. On 7 September 2007, 50 USCS Appx §§ 516 and Appx §§ 525 serve the plaintiff-appellant, in Order Number 047220, to again stop the 60 day clock until the conclusion of military duty on 30 September 2007. Thus, prior to the publication of this order, only 8 days of the 60 day filing period expired, 30 August – 6 September 2007.

d. Following Mr. Persik's return to California, on 30 September 2007, from Ft. Bragg, NC, 52 days remained to timely file an appeal of Judge Whyte's 7 August 2007 Order in *Persik, et. al. v. Tucci Learning Solutions, Inc, et. al.,* C06-07431 RMW (N.D.Cal, 2006). 21 November 2007 is the 52nd day after 30 September 2007.

4. In an attempt to end all doubts concerning the utilization of the SSCRA, Persik cites the Motion Directing the Clerk..., *supra*, at 2,: "Finally, the question is whether this invocation of the SSCRA is in fact discretionary or mandatory. "Limitations provision of 50 USCS Appx §§ 525 is mandatory and not discretionary." *In. Re Estate of Wolf Commissioner*, 264 F2d 82 (1959). Other courts reiterated the same statements: "50 USCS Appx § 525 is not merely permissive, but it is imperatively controlling so as to automatically extend period of redemption, *Peace v. Bullock*, 40 So 2d 82 (1949). Finally, yet one more court states: "50 USCS Appx § 525 was unambiguously mandatory, and therefore, suspension was not affected by fact that serviceman could have effectively pursued his rights while he was in service, *Trew v. Standard Supply & Hardware Co.*, 33 So 2d 426 (La. App. Orleans, 1947)"." Mr. Persik intentionally planned on filing this petition utilizing the SSCRA as a means to develop the use of this statute within the 9th Circuit.

5. [Persik] also completed an added order during August 2007; however, [he] utilized the provisions of 50 USCS §§ 516 and §§ 525 correctly, and [he] did not attempt to double count the same period of time.

In Enclosure 5, to the memorandum to the 9th Circuit, [Persik] attached a copy of the 12th Psychological Operation's battalion training schedule showing "MAJ Persik" listed as the Instructor on 15 September 2007. Additionally, in Enclosure 6, [Persik] provided the first two slides of [his] presentation to the members of HSC, 12th Psychological Operations Battalion; Moffett Federal Airfield, California 94035.

6. Thus, [Persik] maintains that the 9th Circuit's reliance on 28 U.S.C. § 2107(b), as enforced in *United States v. Sadler*, 480 F.3d 932, 937 (9th Circ, 2007) is not applicable in this case. 50 USCS Appx §§ 525 and §§ 516 take priority over the standard 60 day filing period when a federal officer, or agency, is involved, and thus, the 9th Circuit has jurisdiction over the appeal, and this case should be returned to the lower Court where [Persik] will provide the arguments planned prior to Judge Whyte dismissing the case against defendant [TLS] on July 6, 2007, *infra* at B-10.

Part II. Since this legal document represents the final case, in a series of 8 years of federal legal work, allegedly originating from the same cause, a wrongful abortion, will this Court open up all previously filed petitions, pursuant to established case law; Thus, will this Court revisit *Persik v. Colorado, supra, Persik v. Colorado State University, supra, Persik v. Manpower Inc., supra, Persik v. Suthers, Colorado Attorney General, et. al., supra* and *Persik v. Group Health Cooperative, Inc., et al, supra*?

1. This case, and five previously cases, filed in this Court, stem from the same incident, the loss of [Persik]'s unborn son to the procedure of abortion on September 27, 1994. [Persik] maintains that this case is a direct extension of the material contained in the previously filed writs and petitions for rehearing. "If Certiorari is denied earlier in a litigation, and a subsequent petition for certiorari is later granted, ..., may consider questions raised by both petitions", *Chessman v. Teets*, 354 US 156 (1957) and *Mercer v. Theriot*, 377 US 152 (1964).

2. Thus, if this Court grants this petition, will this Court exercise it's authority and revisit the petitions for writ, and the petitions for rehearing, in: (a) *Persik v. Colorado State University*, *infra* at E-4,8, (b) *Persik v. Manpower Inc.*, 542 U.S. 960 (#03-1473, 541 U.S. 1086, 2004), *infra* at E-3,7 (c) *Persik v. Colorado*, 538 U.S. 995 (#02-875, 537 U.S. 1190, 2003), *infra* at E-5,9, *Persik v. Suthers, Colorado Attorney General, et. al.*, 549 U.S. ____ (#06-471, 549 U.S. ___, 2006), *infra* at E-2,6 and *Persik v. Group*

Health Cooperative, Inc., et al, 549 U.S. ___ (#07-1113, 2007) at E-1. Thus, this Court could afford this Nation the opportunity for unparalleled changes in the manner in which this Nation's courts treat equality, domestic violence and protect our children from before birth through adulthood.

3. In 5 Am Jur 2d Appellate Review § 819, the court states: "Amendment or Supplementation of Pleadings on Remand", pleadings may be amended upon remand. Specifically, "Where issues are explicitly intertwined, pleadings may be amended on remand", *Haines Pipeline Construction v. Montana Power Co.*, 830 P2d 1230 (1992). [Persik] maintains that all of [his] 5 federal claims need amending; [Persik] will obtain the help of professional counsel upon remand of any, or all the cases. The issue at hand is more than a little complicated, and for this Court to understand the entire legal picture, [Persik] had to break the legal cases into a series of cases. Subsequently, [Persik] continuously cites some of the same statutes because they are applicable to understand the legal ramifications involved in each case.

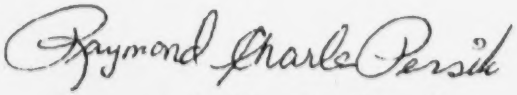
CONCLUSION

The petitioner prays that this honorable Court grants this Petition, and subsequently remands this Case to the 9th Court of Appeals to allow the petitioner to proceed with [his] appeal, and [Persik] prays this Court will subsequently grant previously filed petitions. Additionally, [Persik] prays that the current victory, by the Pro Life people of the State of

Colorado, is in fact one result of this hard fought 9-13 ½ year stand against the procedure of abortion. For the record, [Persik] is referring to the fact a pro life amendment to the Colorado State Constitution will appear on the voter's ballot this November. Upon this Court ordering the remand of any, or all cases, [Persik] will remove the dollar amounts from the cases against Colorado State University and Manpower Inc., to again emphasize, that no cost can be placed on the value of any human life, and all innocent human life, should be protected to the full extent possible by the people of the United States of America.

WHEREFORE THE REASONS PRESENTED IN THIS PETITION, the Petitioner prays this Honorable Court will GRANT this Petition for Writ of Certiorari to the 9th Circuit Court of Appeals in San Francisco, California.

Respectfully re-submitted this 9th day of July 2008.



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APPENDIX

Docket #0_-_____ (2008)

Raymond Charles Persik, et. al.
Petitioner
v.

TUCCI LEARNING SOLUTIONS, INC.
and
HEA-JUNG ATKINS, LOCAL DIRECTOR, U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, SAN JOSE LOCAL OFFICE – 556
Defendants

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APPENDIX A: UNITED STATES COURT OF APPEALS

FEBRUARY 15, 2008, 9th CIRC. ORDER

FILED

FEB 15 2008

CATHY A. CATTERSON, CLERK
U.S. CO URT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RAYMOND C. PERSIK, Plaintiff-Appellant, v. TUCCI LEARNING SOLUTIONS, INC; et al., Defendants-Appellees.	No. 07-17178 D.C. No. CV-06-07431-RMW/HRL ORDER

Before: WALLACE, LEAVY and RYMER, Circuit Judges.

A review of the record demonstrates that this court lacks jurisdiction over this appeal because the November 21, 2007 notice of appeal was not filed within 60 days from entry of the August 8, 2007

judgment. *See* 28 USC § 2107(b); *United States v. Sadler*, 480 F.3d 932, 937 (9th Cir. 2007) (requirement of timely notice of appeal is jurisdictional). Consequently, this appeal is dismissed for lack of jurisdiction.

PROSE

APPENDIX B: UNITED STATES DISTRICT COURT ORDERS

AUGUST 7, 2007, D.C.N.CAL. ORDER

E-filed on 8/8/07

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF
CALIFORNIA
SAN JOSE DIVISION

RAYMOND CHARLES PERSIK, Plaintiff, v. TUCCI LEARNING SOLUTIONS, INC., and HEA-JUNG ATKINS, Defendants.	No. C-06-07431RMW ORDER GRANTING DEFENDANTS' MOTIONS TO DISMISS FIRST AMENDED COMPLAINT [Re Docket No. 35, 39]

Defendants Tucci Learning Solutions ("TLS") and Hea-Jung Atkins ("Atkins") move to dismiss plaintiff Raymond Charles Persik's ("Persik") claims. TLS moves to dismiss Persik's first claim on the basis that it fails to state a claim. Plaintiff did not

file opposition to this motion. Atkins separately moves to dismiss Persik's second claim on the basis that the court lacks subject matter jurisdiction over that claim, or, in the alternative, that it fails to state a claim. Plaintiff filed an opposition to this motion. The court has read the moving papers and considered the arguments of counsel and plaintiff (where provided). For the reasons stated below, the court GRANTS TLS's motion to dismiss plaintiff's first cause of action and GRANTS Atkins' motion to dismiss plaintiff's second cause of action.

I. BACKGROUND

TLS previously moved to dismiss plaintiff's complaint as time-barred and for failure to state a claim. The court granted that motion as unopposed concluding, however, that plaintiff's claim was not time-barred. The court subsequently permitted plaintiff to amend his complaint.

Plaintiff brings a two-count complaint against defendants TLS and Atkins. The first claim is solely against TLS and is for violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq. The second claim is solely against Atkins, in her official capacity as Local Director of the U.S. Equal Employment Opportunity Commission ("EEOC") for the San Jose Local Office, for "obstruction of justice" and failure to follow the EEOC's own procedures, thereby allowing alleged discrimination and abuse to continue. Plaintiff seeks to bring his second claim as a class action. Plaintiff's original complaint was filed

December 1, 2006. The operative complaint, the first amended complaint, was filed June 11, 2007.

Persik was employed by TLS as a counselor for autistic children from January 27, 2005 to May 17, 2005. In his claim against TLS, Persik alleges that he is the victim of discrimination on account of his gender and his religious pro-life views. FAC ¶¶ 19, 26-27. On May 11, 2005, he filed a "Pro Life law suit" against his ex-wife "regarding a borderline late term abortion." Id. ¶ 20. Persik alleges that TLS retaliated by failing to provide him with full-time hours and by ultimately discharging him on May 18, 2005. Id. ¶¶ 20, 26.

On January 23, 2006, Persik filed an intake questionnaire with the EEOC. He filed a charge of discrimination with the EEOC on June 21, 2006. Id. ¶ 11(e). The EEOC dismissed his claim and mailed him a right-to-sue letter on August 29, 2006. As set forth above, the present action was filed on December 1, 2006.

II. ANALYSIS

A. TLS's Motion to Dismiss Persik's First Cause of Action

TLS argues that Persik's first amended complaint fails to state a Title VII claim against TLS. Plaintiff did not submit an opposition to TLS's complaint, stating at the hearing that he believed that the court had already dismissed his claim against TLS. Nevertheless, the court finds that

TLS's motion is well-taken. For the following reasons, the allegations in Persik's first amended complaint do not state facts upon which a viable claim against TLS can be based.

Even viewing the complaint in whole and taking inferences in the light most favorable to plaintiff, the court finds that plaintiff's allegations fail to meet his obligation "to provide the 'grounds' of his 'entitle[ment] to relief" and instead, at best, sets forth "labels and conclusions, and a formulaic recitation of the elements of a cause of action." *See Bell Atlantic Corp. v. Twombly*, 127 S.Ct. 1955, 1964-65 (2007). Plaintiff's complaint also sets forth a myriad of allegations which appear to have nothing to do with TLS. Therefore, plaintiff's allegations are insufficient to state a claim against TLS. Id. Plaintiff has already been given an opportunity to amend his complaint and yet has still failed to allege any factual basis for discrimination and retaliation claims against TLS. Because of the complete absence of any factual basis for his claims against TLS, the court finds that further amendment of this claim would be futile. Accordingly, his first claim against TLS is dismissed with prejudice.

B. Atkins's Motion to Dismiss Persik's Second Claim

Persik alleges that Atkins, in her official capacity as the San Jose Local Director of the EEOC, "obstructed justice" because her office failed to turn over information about acts that plaintiff asserts are crimes and because she "failed to supervise" the processing of his complaint. FAC ¶¶ 9, 39. First,

according to plaintiff, Atkins' office obstructed justice by failing to forward information to the U.S. Attorneys' Office about two "crimes:" (1) Persik's dismissal by an employer he had previously sued during his EEOC proceedings, and (2) Persik's belief that technology that alters a person's thought processes was used by an unknown third party on at least two of the children he counseled (which he seems to maintain need to be reported by the EEOC because he is a mandatory reporter under California law). Second, Persik asserts that the EEOC failed to investigate his charge in a timely manner and accepted the recommendations of an intern which "possibly served to prevent resolution in this case." ¶ 38, 40. Persik appears to take issue with the "'At Will Employment" standard adopted by many companies such as [TLS]," id. at ¶ 42, and seeks to enjoin the EEOC to "work with the [class] to provide added redress for alleged victims of discrimination caused by an employers 'At Will Employment' which forbids true equal employment in the eyes of the class." FAC ¶ 16.

As Atkins is being sued in her official capacity, the allegations against her are treated as a suit against the EEOC. Accordingly, she argues that the EEOC is entitled to sovereign immunity as an agency of the federal government and that this immunity has not been waived by Congress.

Under the doctrine of sovereign immunity, the United States is immune from suit and may define the conditions under which it will permit actions against itself. *United States v. Sherwood*, 312 U.S.

584, 586 (1941). "Jurisdiction over any suit against the Government requires a clear statement from the United States waiving sovereign immunity, together with a claim falling within the terms of the waiver." *United States v. White Mountain Apache Tribe*, 537 U.S. 465, 472 (2003) (citations omitted). Any such consent to be sued "may not be inferred, but must be 'unequivocally expressed' in order to 'define [a] court's jurisdiction.'" Id. (citations omitted, alteration in original).

Absent an express waiver of sovereign immunity, neither the United States nor its agencies can be sued for money damages. *FDIC v. Meyer*, 510 U.S. 471, 475 (1994). Even where a plaintiff seeks only injunctive relief, courts have nevertheless held that "Congress has not authorized, either expressly or impliedly, a cause of action against the EEOC for the EEOC's alleged negligence or other malfeasance in processing an employment discrimination charge." *Uberoi v. EEOC*, 180 F. Supp. 2d 42, 46 (D.D.C. 2001); *see also D'Alessandro v. EEOC*, 215 F. Supp. 2d 419, 421 (D. Del. 2002).

To the extent that plaintiff seeks only injunctive relief and not money damages, the Ninth Circuit has held that this court may not grant relief on the jurisdictional grounds plaintiff invokes. See FAC ¶¶ 5-6. First, plaintiff cannot assert a claim against the EEOC under 42 U.S.C. § 2000e-5 because "Congress did not expressly create a cause of action against the EEOC by employees of third parties. Only present or former employees of the EEOC (or applicants for employment) who allege an unlawful

employment practice committed by the EEOC as an employer may bring a Title VII action against the *EEOC." Ward v. EEOC*, 719 F.2d 311, 313 (9th Cir. 1983) (citing 42 U.S.C. § 2000e-16(c)). Second, the Ninth Circuit has held that the actions of the EEOC alleged in Persik's complaint are not reviewable under the Administrative Procedures Act ("APA"), 5 U.S.C. §§ 702, 706. Id. at 313 (EEOC's inaction in the internal processing complaint has no "determinate consequences for the party to the proceeding" and thus is not a reviewable action under the APA); see also id. at 314 (requirement under the APA that there be "no other adequate remedy in a court" is not met).

Third, under 28 U.S.C. § 1361, court may issue a writ of mandamus "to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff." However, "[m]andamus writs, as extraordinary remedies, are appropriate only when a federal officer, employee, or agency owes a nondiscretionary duty to the plaintiff that is so plainly prescribed as to be free from doubt. A plaintiff must show (1) his claim is "clear and certain"; (2) the official's duty to act is ministerial, and "so plainly prescribed as to be free from doubt"; and (3) no other adequate remedy is available. *Barron v. Reich*, 13 F.3d 1370, 1374 (9th Cir. 1994) (quoting *Fallini v. Hodel*, 783 F.2d 1343, 1345 (9th Cir. 1986)). Plaintiff's obstruction of justice claim is far from clear or certain, nor is it at all clear that the EEOC had any duty to act in under the circumstances alleged. And, as set forth above, the Ninth Circuit has ruled in the context of the APA

that there is another adequate remedy available to plaintiff. Id. at 314.

Even assuming that the court has jurisdiction over plaintiff's civil rights claim against Atkins (whether those are under 42 U.S.C. § 1981 or otherwise), his complaint nevertheless fails to state a claim. Virtually every circuit has held that "Congress has not authorized, either expressly or impliedly, a cause of action against the EEOC for the EEOC's alleged negligence or other malfeasance in processing an employment discrimination charge." *Smith v. Casellas*, 119 F.3d 33, 34 (D.C. Cir. 1997); Baba v. Japan Travel Bureau Int'l, Inc., 111 F.3d 2, 4 (2d Cir. 1997) (citing no cause of action against the EEOC for any "improper investigation or processing of a discrimination charge"); *Scheerer v. Rose State College*, 950 F.2d 661, 663 (10th Cir. 1991); *McCottrell v. EEOC*, 726 F.2d 350, 351-52 (7th Cir. 1984); *Francis-Sobel v. University of Maine*, 597 F.2d 15, 17-18 (1st Cir. 1979); *Gibson v. Missouri Pac. R.R. Co.*, 579 F.2d 890, 891 (5th Cir. 1978); cf. *Ward*, 719 F.2d at 313-14 (no implied cause of action for failure to investigate discrimination complaints adequately). Further, the court has found no basis for plaintiff to assert his generic challenge to the EEOC's stance, whatever it may be, as to at-will employment.

Accordingly, it appears there are no grounds on which plaintiff can state a claim against the EEOC or Atkins in her official capacity. Thus, plaintiff's second cause of action must be dismissed with prejudice.

III. ORDER

For the foregoing reasons, the court:

1. GRANTS TLS's motion to dismiss plaintiff's first cause of action with prejudice for failure to state a claim; and

2. GRANTS Atkins' motion to dismiss plaintiff's second cause of action with prejudice for lack of subject matter jurisdiction. The dismissal with prejudice of both of plaintiff's claims disposes of this action. The clerk shall close the file.

DATED: 8/7/07

s/Ronald M. Whyte

RONALD M. WHYTE
United States District Judge

JULY 10, 2007, D.C.N.CAL. ORDER

E-filed on 7/10/07

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF
CALIFORNIA
SAN JOSE DIVISION

RAYMOND CHARLES PERSIK, Plaintiff, v. TUCCI LEARNING SOLUTIONS, INC., and HEA-JUNG ATKINS, Defendants.	No. C-06-07431RMW ORDER GRANTING DEFENDANT TLS'S MOTION TO DISMISS [Re Docket No. 19]

Defendant Tucci Learning Solutions ("TLS") moves to dismiss plaintiff Raymond Charles Persik's ("Persik") claim for discrimination and retaliation under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., on the basis that it is time-barred and, in the alternative, fails to state a claim Plaintiff did not file opposition to the motion. The court has read the moving papers and considered the arguments of counsel. For the reasons stated below,

the court GRANTS TLS's motion to dismiss plaintiff's first cause of action. As discussed at the June 1, 2007 case management conference, plaintiff shall have until June 11, 2007 to file an amended complaint.

I. BACKGROUND

Plaintiff brings a two-count complaint against defendants TLS and Hea-Jung Atkins ("Atkins"). The first claim is solely against TLS and is for violation of Title VII of the Civil Rights For the Northern District of California Act of 1964, 42 U.S.C. § 2000e et seq. The second claim is solely against Atkins, in his official capacity as Local Director of the U.S. Equal Employment Opportunity Commission ("EEOC") for the San Jose Local Office, for failure to follow their own procedures and thus allowing discrimination and abuse to continue.

Persik was employed by TLS as a counselor for autistic children from January 27, 2005 to May 17, 2005. In his claim against TLS, Persik alleges that he is the victim of discrimination on account of his gender and his religious pro-life views. Compl. ¶ 18. On May 11, 2005, he filed a "Pro Life law suit" against his ex-wife "regarding a borderline late term abortion." Id. ¶ 13. Persik alleges that TLS retaliated by discharging him on May 18, 2007. Id. He also alleges "that technology, which violates International Treatisies [sic] and the 8th Amendment, U.S. Constitution, was potentially used against 2 of [Persik]'s clients after [their] sessions." Id. ¶ 20.

On January 23, 2006, Persik filed an intake questionnaire with the EEOC. He filed a charge of discrimination with the EEOC on June 21, 2006. The EEOC dismissed his claim and mailed him a right-to-sue letter on August 29, 2006. Persik alleges that he received it on September 2, 2006. The present action was filed on December 1, 2006.

II. ANALYSIS

TLS argues that Persik's claim is barred because he failed to exhaust his administrative remedies in a timely manner. An administrative charge of discrimination under Title VII must be filed with the EEOC within 180 days of the alleged discriminatory conduct, or within 300 days if charges are filed with a state or local agency having the authority to grant relief from the same conduct. 42 U.S.C. § 2000e-5(e)(1). TLS argues that, because Persik did not file charges with the Department of Fair Employment and Housing ("DFEH") and he did not file with the EEOC within 180 days, his claim is untimely. However, in deferral states such as California, where the EEOC has entered into a work-sharing agreement with the state agency, a plaintiff has 300 days to file charges with the EEOC. *See, e.g., Davis v. State of California Dep't of Corrections,* 1996 WL 271001 at *16 (E.D. Cal. 1996); EEOC Compliance Manual § 2-IV B. The Ninth Circuit has held that the "filing of an Intake Questionnaire satisfie[s] the statutory obligation to initiate the administrative process within the required 300-day period." *Casavantes v. California State University,* 732 F.2d 1441, 1442 (9th Cir. 1984). Because Persik

filed his questionnaire on January 23, 2006, 240 days after his discharge, it appears that his filing with the EEOC was timely.

TLS next argues that Persik failed to timely file this lawsuit. When a claim is dismissed by the EEOC, it must notify the claimant, who has ninety days from "the giving of such notice" to bring a civil action against the respondent named in the charge. 42 U.S.C. § 2000e-5(f)(1). This provision constitutes a statute of limitations. *Scholar v. Pac. Bell*, 963 F.2d 264, 266-67 (9th Cir. 1992). TLS argues that, pursuant to Fed. R. Civ. P. 6(e), the presumed date of receipt of the right-to-sue letter is three days after the date of mailing. *See Baldwin County Welcome Center v. Brown*, 466 U.S. 147, 148 n.1 (1984). Under such a presumption, because the EEOC mailed Persik the letter on August 29, Persik would be presumed to have received it on September 1, and his filing on December 1 would be one day after the ninety-day limitations period ran. However, TLS cites no cases dismissing a claim for untimely filing based on such a presumption, and the court finds none. In fact, other courts have held that the three-day presumption is rebuttable or that the ninety-day period begins only upon actual receipt. *See Jackson v. Continental Cargo-Denver*, 183 F.3d 1186, 1189-90 (10th Cir. 1999) (holding that only actual receipt of the right-to-sue letter constitutes receipt of notice under the statute); *Sherlock v. Montefiore Medical Ctr.*, 84 F.3d 522, 525-26 (2d Cir. 1996) (holding the three-day presumption is rebuttable if there is evidence that the letter was received more than three days later). Thus, since Persik alleges that he

received the letter when he checked his post office box on September 2 and he filed the present action ninety days later on December 1, the court finds it inappropriate to dismiss the claim as untimely filed.

Finally, TLS argues that Persik fails to state a Title VII claim against TLS. Persik alleges no other conduct by TLS aside from its termination of Persik's employment. Persik's other allegations purporting to support his claim involve his perceptions of people around him, comments made to him by parents of the children he worked with as part of his employment, and his own comments to those parents. None of these allegations plausibly suggests that TLS was motivated by improper considerations in discharging Persik. *See Furnco Constr. Corp. v. Waters*, 438 U.S. 567, 575 (1978) ("[A] Title VII plaintiff carries the initial burden of showing actions taken by the employer from which one can infer, if such actions remain unexplained, that it is more likely than not that such actions were 'based on a discriminatory criterion illegal under the Act.'" (quoting *Teamsters v. United States*, 431 U.S. 324, 358 (1977))). Persik also asserts that his discharge was retaliation for his filing of a pro life lawsuit a week earlier. However, Persik's allegations do not suggest that TLS was aware of the lawsuit or acted on account of it. *See Passantino v. Johnson & Johnson Consumer Prods.*, 212 F.3d 493, 506 (9th Cir. 2000) (stating that a prima facie case of retaliation includes showing "a causal link between the protected activity and the employer's action"); *Mulhall v. Ashcroft*, 287 F.3d 543, 551 (6th Cir. 2002) (holding that, without additional direct or

circumstantial evidence, temporal proximity is insufficient to establish a causal connection).

III. ORDER

For the foregoing reasons, the court GRANTS TLS's motion to dismiss plaintiff's first cause of action. As discussed at the June 1, 2007 case management conference, plaintiff shall have until June 11, 2007 to file an amended complaint.

DATED: 7/6/07

s/Ronald M. Whyte
RONALD M. WHYTE
United States District Judge

APPENDIX C: ORDERS ON REHEARING and JUDGMENT

MARCH 11, 2008 9TH CIRC. MANDATE

UNITED STATES COURT OF APPEALS
MAR 11 2008
FOR THE NINTH CIRCUIT

CATHY A. CATTERSON, ACTING CLERK
U.S. COURT OF APPEALS

RAYMOND C. PERSIK, Plaintiff-Appellant, v. TUCCI LEARNING SOLUTIONS, INC.; HEA-JUNG ATKINS, Local Director, U.S. Equal Employment Opportunity Commission, San Jose Local Office - 556 Defendants-Appellees.	No. 07-17178 D.C. No. CV-06-07431-RMW/HRL MANDATE

The judgment of this Court, entered 2/15/08, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

Molly Dwyer
Acting Clerk of the Court

s/Lee-Ann Collins
By: Lee-Ann Collins
Deputy Clerk

AUGUST 7, 2008 U.S.D.C. N.D.Cal Judgment

E-filed on 8/8/07

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF
CALIFORNIA
SAN JOSE DIVISION

RAYMOND CHARLES PERSIK, Plaintiff, v. TUCCI LEARNING SOLUTIONS, INC., and HEA-JUNG ATKINS, Defendants.	No.C-06-07431 RMW JUDGMENT

On 8/7/07 , the court dismissed all of plaintiff Raymond Charles Persik's claims against defendants Tucci Learning Solutions and Hea-Jung Atkins with prejudice.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment be entered in favor of defendants and against plaintiff. Plaintiff shall take nothing by way of his complaint.

DATED: 8/7/07 s/Ronald M. Whyte
RONALD M. WHYTE
United States District Judge

APPENDIX D: MISCELLANEOUS ORDERS

July 4, 2007 D.C.N.CAL. ORDER

E-filed on 7/4/07

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF
CALIFORNIA
SAN JOSE DIVISION

RAYMOND CHARLES PERSIK, Plaintiff, v. TUCCI LEARNING SOLUTIONS, INC., and HEA-JUNG ATKINS, Defendants.	No. C-06-07431 RMW ORDER REGARDING PLAINTIFF'S FIRST AMENDED COMPLAINT [Re Docket Nos. 4, 29, 31]

At the June 1, 2007 case management conference plaintiff indicated he wished to file an amended complaint. The court directed plaintiff to

file his first amended complaint by June 11, 2007. The court set the date for defendants' motions to dismiss the first amended complaint, if any, for August 3, 2007.[7] On June 11, 2007 plaintiff filed a first amended complaint with the court along with a motion for leave to file the amended complaint and a proposed order granting such motion. By letter dated June 25, 2007 defendant Atkins noted that although plaintiff filed the first amended complaint with the court, he has not yet served defendants with the filing. Therefore, defendants request that plaintiff be directed to serve defendants and that the hearing for motions to dismiss be set for August 24, 2007 or August 31, 2007 to allow sufficient time to notice the motions within the time requirements set forth in the Civil Local Rules.

By letter dated July 2, 2007 plaintiff, proceeding pro se, noted that he was unclear whether the amended complaint needed to be served upon defendants prior to a written ruling by this court granting his motion to file the complaint. Plaintiff requests that the motion hearing be held August 3, 2007. In addition, plaintiff requests that he be permitted to register to use the court's electronic case filing ("ECF") program.

Because the court has already granted plaintiff's request to file an amended complaint, and such complaint was filed timely, plaintiff's motion for

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[7] At the case management conference, defendant Hea-Jung Atkins agreed that in light of the expected first amended complaint, the June 29, 2007 hearing for his motion to dismiss the complaint would be taken off calendar.

leave to file the complaint is moot. Although plaintiff filed a timely first amended complaint, it does not appear that he has served the filed complaint upon defendants. In lieu of requiring plaintiff to serve defendants with the first amended complaint, the court hereby attaches a copy of the first amended complaint to this order, which shall serve as service of the complaint upon defendants. In addition, the court hereby grants plaintiff's request to register and file documents via ECF. Plaintiff is advised to refer to the court's site at https://ecf.cand.uscourts.gov for information and procedures regarding the ECF program.

In addition, the court hereby sets the briefing schedule for any motion to dismiss as follows:

Motion(s) filed by: July 16, 2007

Opposition filed by: July 26, 2007

Reply filed by: July 30, 2007

Hearing: Friday, August 3, 2007, 9:00 a.m.

DATED: 7/3/07 s/Ronald M. Whyte
RONALD M. WHYTE
United States District Judge[8]

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[8] The Amended Complaint is attached to this Order; therefore, the petitioner will check the legality of providing the actual amended complaint, in a supplement to this petition, to this Court.

April 23, 2007 D.C.N.CAL. ORDER

E-filed on: 4/23/07

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF
CALIFORNIA
SAN JOSE DIVISION

RAYMOND CHARLES PERSIK, Plaintiff, v. TUCCI LEARNING SOLUTIONS, INC., and HEA-JUNG ATKINS, Defendants.	No. C-06-07431 RMW ORDER DENYING PLAINTIFF'S MOTION TO RELATE CASES

Pro se plaintiff Raymond Charles Persik moves for this court to relate four closed, out-of district cases pursuant to Civil Local R. 3-12. These out-of-district cases were all filed by plaintiff in Colorado or Washington. Because Rule 3-12 cannot be interpreted to provide for relation of plaintiff's out-of-district cases, the court DENIES plaintiff's motion.

DATED: 4/20/07

s/Ronald M. Whyte
RONALD M. WHYTE
United States District Judge

APPENDIX E: ORDERS of the SUPREME COURT OF THE UNITED STATES

I. U.S. SUPREME COURT ORDERS ON PETITION FOR WRITS OF CERTIORARI

A. APRIL 28, 2008, Re: *Persik v. Group Health Cooperative Inc., et al.*, ___ U.S. ____ (#07-1113, 2007)

Supreme Court of the United States
Office of the Clerk
Washington, D.C. 20543-0001

William K. Suter
Clerk of the Court
(202) 479-3011

April 28, 2008

Mr. Raymond Charles Persik
P.O. Box 3553
Santa Clara, CA 95055

Re: Raymond Charles Persik
v. Group Health Cooperative Inc., et al.
No. 07-1113

Dear Mr. Persik:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,
s/William K Suter
William K. Suter, Clerk

B. DECEMBER 4, 2006, Re: *Persik v. Suthers, et. al.*, 549 U.S. ____ (#06-471, 2006)

Supreme Court of the United States
Office of the Clerk
Washington, D.C. 20543

William K. Suter
Clerk of the Court
(202) 479-3011

December 4, 2006

Mr. Raymond Charles Persik
P.O. Box 3553
Santa Clara, CA 95055

Re: Raymond Charles Persik
v. John W. Suthers, Attorney General of Colorado, et al.
No. 06-471

Dear Mr. Persik:

The Court today entered the following order in the above entitled case:

The petition for a writ of certiorari is denied.

Sincerely,

s/William K Suter
William K. Suter, Clerk

C. JUNE 7, 2004, Re: *Persik v. Manpower, Inc.*, 541 U.S. 990 (#03-1473, 2004)

Supreme Court of the United States
Office of the Clerk
Washington, D.C. 20543-0001

William K. Suter
Clerk of the Court
(202) 479-3011

June 7, 2004

Mr. Raymond Charles Persik
7079 West 84th Way
Apt 311
Arvada, CO 80003

Re: Raymond Charles Persik
v. Manpower Inc.
No. 03-1473

Dear Mr. Persik:

The Court today entered the following order in the above entitled case:

The petition for a writ of certiorari is denied.

Sincerely,

s/William K Suter

William K. Suter, Clerk

D. APRIL 19, 2004, Re: *Persik v. Colorado State University*, 541 U.S. 990 (#03-1278, 2004)

Supreme Court of the United States
Office of the Clerk
Washington, D.C. 20543-0001

William K. Suter
Clerk of the Court
(202) 479-3011

April 19, 2004

Mr. Raymond Charles Persik
7079 West 84th Way
Apt 311
Arvada, CO 80003

Re: Raymond Charles Persik
v. Colorado State University
No. 03-1278

Dear Mr. Persik:

The Court today entered the following order in the above entitled case:

The petition for a writ of certiorari is denied.

Sincerely,

s/William K Suter

William K. Suter, Clerk

E. FEBRUARY 24, 2003, Re: *Persik v. Colorado*, 537 U.S. 1190 (#02-875, 2002)

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543

February 24, 2003

Mr. Raymond Charles Persik
2519 S. Shields Street, 1K
#202
Fort Collins, CO 80526

Re: Raymond C. Persik
v. Colorado
No. 02-875

Dear Mr. Persik:

The Court today entered the following order in the above entitled case:

The petition for a writ of certiorari is denied.

Sincerely,

s/William K Suter

William K. Suter, Clerk

II. U.S. SUPREME COURT ORDERS ON PETITIONS FOR REHEARING

A. FEBRUARY 20, 2007, Re: *Persik v. Suthers, et. al.*, 549 U.S. ____ (#06-471, 549 U.S. ____ 2006)

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543

William K. Suter
Clerk of the Court
(202) 479-3011

February 20, 2007

Mr. Raymond Charles Persik
P.O. Box 3553
Santa Clara, CA 95055

Re: Raymond Charles Persik
v. John W. Suthers, Attorney General of Colorado, et al.
No. 06-471

Dear Mr. Persik:

The Court today entered the following order in the above entitled case:

The petition for rehearing is denied.

Sincerely,

s/William K Suter

William K. Suter, Clerk

B. AUGUST 23, 2004, Re: *Persik v. Manpower, Inc.*, 542 U.S. 960 (#03-1473, 541 U.S. 1086, 2004)

Supreme Court of the United States
Office of the Clerk
Washington, D.C. 20543

William K. Suter
Clerk of the Court
(202) 479-3011

August 23, 2004

Mr. Raymond Charles Persik
7079 West 84th Way
Apt 311
Arvada, CO 80003

Re: Raymond C. Persik
v.
Manpower, Inc.
No. 03-1473

Dear Mr. Persik:

The Court today entered the following order in the above entitled case:

The petition for rehearing is denied.

Sincerely,

s/William K Suter
William K. Suter, Clerk

C. JUNE 14, 2004, Re: *Persik v. Colorado State University*, 542 U.S. 916 (#03-1278, 541 U.S. 990, 2004)

Supreme Court of the United States
Office of the Clerk
Washington, D.C. 20543-0001

William K. Suter
Clerk of the Court
(202) 479-3011

June 14, 2004

Mr. Raymond Charles Persik
7079 West 84th Way
Apt 311
Arvada, CO 80003

Re: Raymond Charles Persik
v. Colorado State University
No. 03-1278

Dear Mr. Persik:

The Court today entered the following order in the above entitled case:

The petition for rehearing is denied.

Sincerely,

s/William K Suter

William K. Suter, Clerk

D. APRIL 21, 2003, Re: *Persik v. Colorado*, 538 U.S. 995 (#02-875, 537 U.S. 1190, 2002)

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543

April 21, 2003

Mr. Raymond Charles Persik
2519 S. Shields Street, 1K
#202
Fort Collins, CO 80526

Re: Raymond C. Persik
v. Colorado
No. 02-875

Dear Mr. Persik:

The Court today entered the following order in the above entitled case:

The petition for rehearing is denied.

Sincerely,

s/William K Suter

William K. Suter, Clerk

APPENDIX F: TREATISES, CONSTITUTIONAL AUTHORITIES AND STATUTES

I. U.S. CONSTITUTIONAL AMENDMENTS

1. Amendment XIV, U.S. Constitution. Citizenship; Privileges and Immunities; Due Process; Equal Protection; Apportionment of Representation; Disqualification of Officers; Public Debt; Enforcement.

"Sec. 1 [Citizens of the United States.] All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Sec 2 [Representatives-Power to reduce apportionment.] Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a

State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Sec. 3 [Disqualification to hold office.] No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each House, remove such disability.

Sec. 4 [Public debt not to be questioned-Debts of the Confederacy and claims not to be paid.] The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or

emancipation of any slaves; but all such debts, obligations, and claims shall be held illegal and void.

Sec. 5 [Power to enforce amendment.] The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

II. FEDERAL STATUTES

A. 10 USCS

1. 10 USCS § 331. Federal aid for State governments

Whenever there is an insurrection in any State against its government, the President may, upon the request of its legislature or its governor if the legislature cannot be convened, call into Federal service such of the militia of the other States, in the number requested by that State, and use such of the armed forces as he considers necessary to suppress the insurrection.
(Aug. 10, 1956, ch 1041, § 1, 70A Stat. 15.)

2. 10 USCS § 333 (1999) Interference with State and Federal law.

The President, by using militia or the armed forces, or both, or by any other means, shall take such measures as he considers necessary to suppress, in a State, and insurrection, domestic violence, unlawful combination, or conspiracy, if it·
(1) so hinders the execution of the laws of that State, and of the United States within the State, that

any part or class of its people is deprived of a right, privilege, immunity, or protection named in the Constitution and secured by law, and the constituted authorities of that State are unable, fail, or refuse to protect that right, privilege, or immunity, or give that protection; or

(2) opposes or obstructs the execution of the laws of the United States or impedes the course of justice under those laws.

In any situation covered by clause (1), the State shall be considered to have denied the equal protection of the laws secured by the Constitution.

(Aug. 10, 1956, ch 1041, § 1, 70A Stat. 15.)

3. 10 USCS § 380. Enhancement of cooperation with civilian law enforcement officials.

(a) The Secretary of Defense, in cooperation with the Attorney General, shall conduct an annual briefing of law enforcement personnel of each State (including law enforcement personnel of the political subdivisions of each State) regarding information, training, technical support, and equipment and facilities available to civilian law enforcement personnel from the Department of Defense...

(b)-(c) Not shown in appendix here

4. 10 USCS § 814. Art. 14. Delivery of offenders to civil authorities.

(a) Under such regulations as the Secretary concerned may prescribe, a member of the armed forces accused of an offense against civil authority

may be delivered, upon request, to the civil authority for trial.

(b) When delivery under this article is made to any civil authority of a person undergoing sentence of a court-martial, the delivery, if followed by conviction in a civil tribunal, interrupts the execution of the sentence of the court-martial, and the offender after having answered to the civil authorities for his offense shall, upon the request of competent military authority, be returned to military custody for the completion of his sentence.

5. 10 USCS § 878. Art. 78. Accessory after the fact.

Any person subject to this chapter who, knowing that an offense punishable by this chapter has been committed, receives, comforts, or assists the offender in order to hinder or prevent his apprehension, trial, or punishment shall be punished as a court-martial may direct.

6. 10 USCS § 881. Art. 81. Conspiracy.

Any person subject to this chapter who conspires with any other person to commit an offense under this chapter shall, if one or more of the conspirators does an act to effect the object of the conspiracy, be punished as a court-martial may direct.

7. 10 USCS § 917. Art. 117. Provoking speeches or gestures.

Any person subject to this chapter who uses provoking or reproachful words or gestures towards

any other person subject to this chapter shall be punished as a court-martial may direct.

B. 18 USCS

1. 18 USCS § 241. Conspiracy against rights.

If two or more persons conspire to injure, oppress, threaten, or intimidate any inhabitant of any State, Territory, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured. They shall be fined not more than $10,000 or imprisoned not more than ten years, or both; and if death results, they shall be subject to imprisonment for any term of years or for life.

Clause making conspirator ineligible to hold office was omitted as incongruous because it attaches ineligibility to hold office to a person who may be a private citizen and who was convicted of conspiracy to violate a specific statute. There seems to be no reason for imposing such a penalty in the case of one individual crime, in view of the fact that other crimes do not carry such a severe consequence. The experience of the Department of Justice is that this unusual penalty has been an obstacle to successful prosecution for violations of the act. Mandatory punishment provision was rephrased in the alternative because the court has this discretion by

making use of its power to suspend sentence under 18 USCS § 3651.
Minor changes in phraseology were made.

2. 18 USCS § 1341. Frauds and swindles.

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or takes or receives there from, any such matter or thing, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing; shall be fined not more than $1,000 or imprisoned not more than five years, or both. If the violation affects a financial institution, such person shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both.

3. 18 USCS § 1512. Tampering with a witness, victim, or informant.

(a)(1) Whoever kills or attempts to kill another person, with intent to-

(A) prevent the attendance or testimony of any person in an official proceeding;

(B) prevent the production of a record, document, or other object, in an official proceeding; or

(C) prevent the communication by any person to a law enforcement officer or judge of the United States of information relating to the commission of possible commission of a Federal offense or a violation of conditions of probation, parole, or release pending judicial proceedings;

shall be punished as provided in paragraph (2).

(2) The punishment for an offense under this subsection is-

(A) in the case of a killing, the punishment provided in sections 1111 and 1112 of this title; and

(B) in the case of an attempt, imprisonment for not more than twenty years.

(b) Whoever knowingly uses intimidation or physical force, threatens or corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to-

(1) influence, delay or prevent the testimony of any person in an official proceeding;

(2) cause or induce any person to-

(A)..withhold testimony, or withhold a record, document, or other object with intent to impair the object's integrity or availability for use in an official proceeding;

(B) alter, destroy, mutilate, or conceal an object with intent to impair the object's integrity or availability for use in an official proceeding;

(C) evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object, in an official proceeding; or

(D) be absent from an official proceeding to which such person has been summoned by legal process; or

(3) hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or ...; shall be fined not more than $250,000 or imprisoned not more than ten years, or both

(c) Whoever intentionally harasses another person and thereby hinders, delays, prevents, or dissuades and person from –

(1) attending or testifying in an official proceeding;

(2) reporting to a law enforcement officer or judge of the United States the commission or possible commission of a Federal offense or a violation of conditions of probation, parole, or release pending judicial proceedings;

(3) arresting or seeking the arrest of another person in connection with a Federal offense; or ... or attempts to do so, shall be fined not more than $25,000 or imprisoned not more than one year, or both.

(d) In a prosecution for an offense under this section, it is an affirmative defense, as to which the defendant has the burden of proof by a preponderance of the evidence, that the conduct consisted solely of lawful conduct...

(e) For the purposes of this section-

(1) an official proceeding need not be pending or about to be instituted at the time of the offense; and

(2) the testimony, or the record, document, or other object need not be admissible in evidence or free from the claim of privilege.
(f) ...
(g) ...
(h) A prosecution under this section or section 1503 may be brought in the district in which the official proceeding (whether or not pending or about to be instituted) was intended to be affected or in the district in which the conduct constituting the alleged offense occurred.

4. 18 USCS § 1513. Retaliating against a witness, victim, or an informant.

(a) Whoever knowingly engages in any conduct and thereby causes bodily injury to another person or damages the tangible property of another person, or threatens to do so, with intent to retaliate against any person for-

(1) the attendance of a witness or party at an official proceeding, or any testimony given or any record, document, or other object produced by a witness in an official proceeding; or

(2) any information relating to the commission or possible commission of a Federal offense or a violation of conditions...

or attempts to do so, shall be fined not more than $250,000 or imprisoned not more than ten years, or both.
(b) There is extraterritorial Federal jurisdiction over an offense under this section.

5. 18 USCS § 1514. Civil action to restrain harassment of a victim or a witness.

(a)(1) A United States district court, upon application of the attorney for the Government, shall issue a temporary restraining order prohibiting harassment of a victim or witness in a Federal criminal case if the court finds, from specific facts shown by affidavit or by verified complaint, that there are reasonable grounds to believe that harassment of an identified victim or witness in a Federal criminal case exists or that such order is necessary to prevent and restrain an offense under section 1512 of this title, other than an offense consisting of misleading conduct, under section 1513 of this title.

(2)(A) A temporary restraining order may be issued under this section without written or oral notice to the adverse party or such party's attorney in a civil action under this section if the court finds, upon written certification of facts by the attorney for the Government, that such notice should not be required and that there is a reasonable probability that the Government will prevail on the merits.

6. 18 USCS § 1951. Interference with commerce by threats or violence.

(a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in

violation of this section shall be fined under this title or imprisoned not more than twenty years, or both.
(b) As used in this section-

(1) The term "robbery" means the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining.

(2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

(3) The term "commerce" means commerce within the District of Columbia, or any Territory or Possession of the United States; all commerce between any point in a State, Territory, Possession, or the District of Columbia and any point outside thereof; all commerce between points within the same State through any place outside such State; and all other commerce over which the United States has jurisdiction.

(c) This section shall not be construed to repeal, modify or affect section 17 of Title 15 [15 USCS § 17], sections 52, 101-115, 151-166 of Title 29 or sections 151-188 of Title 45 [45 USCS §§ 151-188].

(June 25, 1948, ch 645, § 1, 62 Stat. 793; Sept. 13, 1994, P.L. 103-322, Title XXXIII, § 330016(1)(L), 108 Stat. 2147.)

7. 18 USCS § 1952. Interstate and foreign travel or transportation in aid of racketeering enterprises.

(a) Whoever travels in interstate or foreign commerce or uses the mail or any facility in interstate or foreign commerce, with intent to-

(1) distribute the proceeds of any unlawful activity; or

(2) commit any came of violence to further any unlawful activity; or

(3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity, and thereafter performs or attempts to perform-

(A) an act described in paragraph (1) or (3) shall be fined under this title or imprisoned not more than 5 years, or both; or

(B) an act described in paragraph (2) shall be fined under this title, imprisoned for not more than 20 years. or both, and if death results shall be imprisoned or any term of years or for life.

(b) As used in this section (i) "unlawful activity" means (l) any business enterprise involving gambling, liquor on which the Federal excise tax has not been paid, narcotics or controlled substances as defined in section 102(6) of the Controlled Substances Act [21 USCS § 802 (b)], or prostitution offenses in violation of the laws of the State in which they are committed or of the United States, (2) extortion, bribery, or arson in violation of the laws of the State in which committed or of the United States, or (3) any act which is indictable under

subchapter II of chapter 53 of title 31, United States Code, or under section 1956 or 1957 of this title and (ii) the term "State" includes a State of the United States, the District of Columbia, and any commonwealth, territory or any possession of the United States.

(c) Investigations of violations under this section involving liquor shall be conducted under this supervision of the Secretary of the Treasury.

8. 18 USCS § 1961. Definitions.

As used in this chapter [18 USCS §§ 1961 et seq.]-
(1) "racketeering activity" means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in section 102 or the Controlled Substances Act [21 USCS § 802]), which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title18, United States Code 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891-894 (relating to extortionate credit transactions), section 1028, (relating to fraud and related activity in connection with identification documents) , section 1029 (relating to fraud and

related activity in connection with access devices), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1344 (relating to financial institution fraud), section 1425 (relating to the procurement of citizenship or nationalization unlawfully) , section 1426 (relating to the reproduction of naturalization or citizenship papers), section 1427 (relating to the sale of naturalization or citizenship papers), section 1427 (relating to the sale of naturalization of citizenship papers), sections 1461-1465 (relating to obscene matter), section 1503 (relating to obstruction of justice , section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant), section 1542 (relating to a false statement in application and use of passport), section 1543 (relating to forgery or false use of passport), section 1544 (relating to misuse of passport), section 1546 (relating to fraud and misuse of visas, permits, and other documents), sections 1581-1588 (relating to peonage and slavery), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), section 1956 (relating to the laundering of monetary instruments), section 1957 (relating to engaging in

monetary transactions in property derived from specified unlawful activity), section 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire), 2251, 2251A, 2252, and 2260 (relating to sexual exploitation of children), sections 2312 and 2313 (relating to interstate transportation of stolen motor vehicles), sections 2314 and 2315 (relating to interstate transportation of stolen property), section 2318 (relating to trafficking in counterfeit labels for phone records, computer programs or computer program documentation or packaging and copies of motion pictures or other audiovisual works), section 2319 (relating to criminal infringement of copyright), section 2319A (relating to unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances), section 2320 (relating to trafficking in goods or services bearing counterfeit marks), section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), sections 2341-2346 (relating to trafficking in contraband cigarettes), sections 2421-24 (relating to white slave traffic), (C) an act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds), (D) any offense involving fraud connected with a case under title 11 (except a case under section 157 of this title), fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act [21 USCS §

802]), punishable under any law of the United States, (E) any act which is indictable under the Currency and Foreign Transactions Reporting Act, (F) any act which is indictable under the Immigration and Nationality Act, section 274 [8 USCS § 1324] (relating to bringing in and harboring certain aliens), section 277 [8 USCS § 1327] (relating to aiding or assisting certain aliens to enter the United States), or section 278 (8 USCS § 1328] (relating to importation of alien for immoral purpose) if the act indictable under such section of such Act was committed for the purpose of financial gain, or (G) any act that is indictable under any provision listed in section 2332b(g)(5)(B);

(2) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof;

(3) "person" includes any individual or entity capable of holding a legal or beneficial interest in property;

(4) "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity;

(5) "pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity;

(6) "unlawful debt" means a debt (A) incurred or contracted in gambling activity which was in

violation of the law of the United States, a State or political subdivision thereof, or which is unenforceable under State or Federal law in whole or in part as to principal or interest because of the laws relating to usury, and (B) which was incurred in connection with the business of gambling in violation of the law of the United States, a State or political subdivision thereof, or the business of lending money or a thing of value at a rate usurious under State or Federal law, where the usurious rate is at least twice the enforceable rate;

(7) "racketeering investigator" means an attorney or investigator so designated by the Attorney General and charged with the duty of enforcing or carrying into effect this chapter [18 USCS §§ 1961 et seq.];

(8) "racketeering investigation" means any inquiry conducted by any racketeering investigator for the purpose of ascertaining whether any person has been involved in any violation of this chapter [18 USCS §§ 1961 et seq.] or of any order, judgment, or decree of any court of the United States,

duly entered in any case or proceeding arising under this chapter [18 USCS §§ 161, et. seq.];

(9) "documentary material" includes any book, paper, document, record, recording, or other material; and

(10) "Attorney General" includes the Attorney General of the United States, the Deputy Attorney General of the United States, the Associate Attorney General of the United States, any Assistant Attorney General of United States, or any employee of the Department of Justice or any employee of any department or agency of the United States so designated by the Attorney General to carry out the

powers conferred on the Attorney General by this chapter [18 USCS §§ 1961 et seq.]. Any department or agency so designated may use in investigations authorized by this chapter [18 USCS §§ 1961 et seq.] either the investigative provisions of this chapter [18 USCS §§ 1961 et seq.] or the investigative power of such department or agency otherwise conferred by law.

C. 42 USCS

1. 42 USCS § 1981a. Damages in cases of intentional discrimination in employment.

(a) Right of recovery.
(b) Compensatory and punitive damages.
(c) Jury trial.
(d) Definitions.

2. 42 USCS § 1985. Conspiracy to interfere with civil rights.

(1) If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district or place, where his duties as an officer of the United States to leave any State, district or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge

thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

(2) Obstructing justice; intimidating party, witness, or juror. If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) Depriving persons of rights or privileges. If two or more persons in any State or Territory conspire, or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or or of equal privileges and immunities under the laws, or for the purpose of

preventing or hindering all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice-President, or as a member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators. (R.S. § 1980.)

3. 42 USCS § 1986. Conspiracy to interfere with civil rights.

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in the preceding section [42 USCS § 1985], are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable

diligence could have prevented; and such damages may be recovered in an action on the case on the case; and any number of persons guilty of such wrongful neglect or refusal maybe joined as defendants in the action, and if the death of any party be caused buy any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefore, and may recover not exceeding five thousand dollars damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under this provisions of this section shall be sustained which is not commenced within one year after the cause of action accrued. (R.S. § 1981.)

4. 42 USCS § 2000 e. Definitions

For the purposes of this title [42 USCS §§ 2000e et seq.]-

(a) The term "person" includes one or more individuals, governments. governmental agencies, political subdivisions, labor union,s, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under title 11. United States Code, or receivers.

(b) Tile term "employer" means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or

preceding calendar year, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Goverment of the United States, an Indian tribe, or any department or agency of the District of Columbia subject by statute to procedures of the competitive service (as defined in section 2102 of title 5 of the United States Code) or (2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of the Internal Reveuue Code of 1954 [26 USCS § 501(c)] except that during the first year after the date of enactment of the Equal Employment Opportunity Act of 1972 [enacted March 24, 1972], persons having fewer than twenty-five employees (and their agents) shall not be considered employers.

(c) The term "employment agency" means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person.

(d) The term "labor organization" means a labor organization engaged in an industry affecting commerce, and any agent of such an organization, and includes any organization of any kind, any agency, or employee representation cormnittee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other temps or conditions of employmeut, and any conference,

general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization.

(e) A labor organization shall be deemed to be engaged in au industry affecting commerce if (1) it maintains or operates a hiring hall or hiring office which procures employees for an employer or procures for employees opportunities to work for an employer, or (2) the number of its members for, where it is a labor organization composed of other labor organizations or their representatives, if the aggregate number of the members of such other labor organization is (A) twenty-five or more during the first year after the date of enactment of the Equal Employment Opportunity Act of 1972 [enacted March 24, 1972], or (B) fifteen or more thereafter, and such labor organization-

(1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended, or the Railway Labor Act, as amended;

(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce: or;

(3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or

(4) has been chartered by a labor organization representing or actively seeking to represent

employees within the meaning of paragraph (1) or (2) has the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(5) is a conference, general committee, joint or system board, or joint Council subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce witbin the meaning of any of the preceding paragraphs of this subsection.

(f) The term "employee" means an individual employed by an employer, except that the term "employee" shall not include any person elected to public offce in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to be on such officer's personal staff, or an appointee on the policy making level or an immediate adviser with respect to the exercise of the constitutiooal or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a State government, governmental agency or political subdivision. With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States.

(g) The term "commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States; or between a State and any place outside thereof; or within the District of Columbia, or a possession of the United States; or between points in the same State but

through a point outside thereof.

(h) The term "industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" witttin the meaning of the Labor-Management Reporting and Disclosure Act of 1959 [29 USCS §§ 401 et seq.], and further includes any governmental industry, business, or activity.

(i) The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa. Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act [43 USCS §§ 1331 et seq.].

(j) The term "religion" includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.

(k) The terms "because of sex" or "on the basis of sex" include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe

benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in section 703(h) of this title [42 USCS § 2000e-2(h)] shall be interpreted to permit otherwise. This subsection shall not require an employer to pay for health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term, or except where medical complications have arisen from an abortion: *Provided*, That nothing herein shall preclude an employer from providing abortion benefits or otherwise affect bargaining agreements in regard to abortion.

(l) The term "complaining party" means the Commission, the Attorney General, or a person who may bring an action or proceeding under this title.

(m) The term "demonstrates" means meets the burdens of production and persuasion.

(n) The term "respondent" means an employer, employment agency, labor organization, joint labor-management committee controlling apprenticeship or other training or retraining program, including an on-the-job training program or Federal entity subject to section 717.

5. 42 USCS. § 2000e-2. Unlawful employment practices

(a) Employer practices. It shall be an unlawful employment practice for an employer-

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, or classify his employees or applicants for employment any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

(b) Employment agency practices. It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or national origin.

(c) Labor organization practices. It shall be an unlawful employment practice for a labor organization

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin;

(2) to limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer for employment any

individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, or national origin; or
(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(d) Training programs. It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program, established to provide apprenticeship or other training.

(e) Businesses or enterprises with personnel qualified on basis of religion, sex, or national origin; educational institutions with personnel of particular religions. Notwithstanding any other provision of this title [42 USCS §§ 2000e et seq.], (1) it shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify, or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or

retraining programs to admit or employ any individual in any such program, on the basis of his religion, sex, or national origin in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise, and (2) it shall not be an unlawful employment practice for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion if such school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion.

(f) Members of Communist Party or Communist-action or Communist- front organizations. As used in this title [42 USCS §§ 2000e et seq.], the phrase "unlawful employment practice" shall not be deemed to include any action or measure taken by an employer, labor organization, joint labor-management committee, or employment agency with respect to an individual who is a member of the Communist Party of the United States or of any other organization required to register as a Communist-action or Communist-front organization by final order of the Subversive Activities Control Board pursuant to the Subversive Activities Control Act of 1950.

(g) National security. Notwithstanding any other provision of this title [42 USCS §§ 2000e et seq.], it shall not be an unlawful employment practice for an employer to fail or refuse to hire and employ any individual for any position, for an employer to discharge any individual from any position, or for an employment agency to fail or refuse to refer any individual for employment in any position, or for a labor organization to fail or refuse to refer any individual for employment in any position, if-

(1) the occupancy of such position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any statute of the United States or any Executive order of the President; and

(2) such individual has not fulfilled or has ceased to fulfill that requirement.

(h) Seniority or merit system; quantity or quality of production; ability tests; compensation based on sex and authorized by minimum wage provisions. Notwithstanding any other provision of this title [42 USCS §§ 2000 e et seq.], it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or

quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex, or national origin, nor shall it be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex or national origin. It shall not be an unlawful employment practice under this title [42 USCS §§ 2000e et seq.] for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of such employer if such differentiation is authorized by the provisions of section 6(d) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 206(d)).

(i) Businesses or enterprises extending preferential treatment to Indians. Nothing contained in this title [42 USCS §§ 2000e et seq.] shall apply to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of such business or enterprise under which a preferential treatment is given to any individual because he is an Indian living on or near a reservation.

(j) Preferential treatment not to be granted on account of existing number or percentage imbalance. Nothing contained in this title [42 USCS §§ 2000e et seq.] shall be interpreted to require any employer, employment agency, labor organization, or joint

labor-management committee subject to this title [42 USCS §§ 2000e et seq.] to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by an employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area.

(k) Burden of proof in disparate impact cases. (1)(A) An unlawful employment practice based on disparate impact is established under this title only if-

(i) a complaining party demonstrates that a respondent uses a particular employment practice that causes a disparate impact on the basis of race, color, religion, sex, or national origin and the respondent fails to demonstrate that the challenged practice is job related for the position in question and consistent with business necessity; or

(ii) the complaining party makes the demonstration described in subparagraph (C) with respect to an alternative employment

practice and the respondent refuses to adopt such alternative employment practice.

(B)(i) With respect to demonstrating that a particular employment practice causes a disparate impact as described in subparagraph (A)(i), the complaining party shall demonstrate that each particular challenged employment practice causes a disparate impact, except that if the complaining party can demonstrate to the court that the elements of a respondent's decision making process are not capable of separation for analysis, the decision making process may be analyzed as one employment practice.

(ii) If the respondent demonstrates that a specific employment practice does not cause the disparate impact, the respondent shall not be required to demonstrate that such practice is required by business necessity.

(C) The demonstration referred to by subparagraph (A)(ii) shall be in accordance with the law as it existed on June 4, 1989, with respect to the concept of "alternative employment practice".

(2) A demonstration that an employment practice is required by business necessity may not be used as a defense against a claim of intentional discrimination under this title.

(3) Notwithstanding any other provision of this title [42 USCS §§ 2000e et seq.], a rule barring the

employment of an individual who currently and knowingly uses or possesses a controlled substance, as defined in schedules I and II of section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)), other than the use or possession of a drug taken under the supervision of a licensed health care professional, or any other use or possession authorized by the Controlled Substances Act or any other provision of Federal law, shall be considered an unlawful employment practice under this title only if such rule is adopted or applied with an intent to discriminate because of race, color, religion, sex, or national origin.

(l) Prohibition of discriminatory use of test scores. It shall be an unlawful employment practice for a respondent, in connection with the selection or referral of applicants or candidates for employment or promotion, to adjust the scores of, use different cutoff scores for, or otherwise alter the results of, employment related tests on the basis of race, color, religion, sex, or national origin.

(m) Impermissible consideration of race, color, religion, sex, or national origin in employment practices. Except as otherwise provided in this title [42 USCS§§ 2000e et seq.], an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, or national origin was a motivating factor for any employment practice, even though other factors also motivated the practice.

(n) Resolution of challenges to employment practices implementing litigated or consent judgments or orders.

(1)(A) Notwithstanding any other provision of law, and except as provided in paragraph (2), an employment practice that implements and is within the scope of a litigated or consent judgment or order that resolves a claim of employment discrimination under the Constitution or Federal civil rights laws may not be challenged under the circumstances described in subparagraph (B).

(B) A practice described in subparagraph (A) may not be challenged in a claim under the Constitution or Federal civil rights laws-

(i) by a person who, prior to the entry of the judgment or order described in subparagraph (A), had-

(I) actual notice of the proposed judgment or order sufficient to apprise such person that such judgment or order might adversely affect the interests and legal rights of such person and that an opportunity was available to present objections to such judgment or order by a future date certain; and

(II) a reasonable opportunity to present objections to such judgment or order; or

(ii) by a person whose interests were adequately represented by another person who had previously challenged the judgment or order on the same legal grounds and with a

similar factual situation, unless there has been an intervening change m law or fact.

(2) Nothing in this subsection shall be construed to-

(A) alter the standards for intervention under rule 24 of the Federal Rules of Civil Procedure or apply to the rights of parties who have successfully intervened pursuant to such rule in the proceeding in which the parties intervened;
(B) apply to the rights of parties to the action in which a litigated or consent judgment or order was entered, or of members of a class represented or sought to be represented in such action, or of members of a group on whose behalf relief was sought in such action by the Federal Government;
(C) prevent challenges to a litigated or consent judgment or order on the ground that such judgment or order was obtained through collusion or fraud, or is transparently invalid or was entered by a court lacking subject matter jurisdiction; or
(D) authorize or permit the denial to any person of the due process of law required by the Constitution.

(3) Any action not precluded under this subsection that challenges an employment consent judgment or order described in paragraph (1) shall be brought in the court, and if possible before the judge, that entered such judgment or order. Nothing in this subsection shall preclude a transfer of such action pursuant to section 1404 of title 28, United States Code.

6. 42 USCS § 2000e-3. Other unlawful employment practices

(a) Discrimination for making charges, testifying, assisting, or participating in enforcement proceedings. It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has Opposed any Practice made an unlawful employment practice by this title [42 USCS §§ 2000e-2000e-17], or because he has made a charge, testified, assisted, or participated in any manner in an investigation, Proceeding, or hearing under this title [42 investigation, Proceeding, or hearing under this title [42 USCS §§ 2000e-2000e-171.1

(b) printing or publication of notices or advertisements indicating Prohibited preference, limitation, specification, or discrimination; occupational qualification exception. It shall be an unlawful employment practice for an employer, labor organization, employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to print or publish or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, or relating to admission

to, or employment in, any program established to provide apprenticeship or other training by such a joint labor-management committee indicating any preference, limitation, specification, or discrimination, based on race, color, religion, sex, or national origin, except that such a notice or advertisement may indicate a preference, limitation, specification, or discrimination based on religion, sex, or national origin when religion, sex, or national origin is a bona fide occupational qualification for employment.
(July 2, 1964, P. L. 88-352, Title VIL § 704, 78 Stat. 257; Mar. 24, 1972, P.L. 92-261, § 8(c), 86 Stat 109.)

7. 42 § 2000e-5. Enforcement provisions

(a) Power of Commission to prevent unlawful employment practices. The Commission is empowered, as hereinafter provided, to prevent any person from engaging in any unlawful employment practice as set forth m section 703 or 704 of this title [42 USCS §§ 2000e-2 or 2000e-3].
(b) Charges by persons aggrieved or member of Commission of unlawful employment practices by employers, etc.; filing; allegations; notice to respondent; contents of notice; investigation by Commission; contents of charges; prohibition on disclosure of charges; determination of reasonable cause; conference, conciliation, and persuasion for elimination of unlawful practices; prohibition on disclosure of informal endeavors to end unlawful practices; use of evidence in subsequent proceedings; penalties for disclosure of information; time for determination of reasonable cause. Whenever a

charge is made by or on behalf of a person claiming to be aggrieved, or by a member of the Commission, alleging that an employer, employment agency, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, has engaged in an unlawful employment practice, the Commission shall serve a notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) on such employer, employment agency, labor organization, or joint labor-management committee (hereinafter referred to as the "respondent") within ten days, and shall make an investigation thereof. Charges shall be in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires. Charges shall not be made public by the Commission. If the Commission determines after such investigation that there is not reasonable cause to believe that the charge is true, it shall dismiss the charge and promptly notify the person claiming to be aggrieved and the respondent of its action. In determining whether reasonable cause exists, the Commission shall accord substantial weight to final findings and orders made by State or local authorities in proceedings commenced under State or local law pursuant to the requirements of subsections (c) and (d). If the Commission determines after such investigation that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a

part of such informal endeavors may be made public by the Commission, its officers or employees, or used as evidence in a subsequent proceeding without the written consent of the persons concerned. Any person who makes public information in violation of this subsection shall be fined not more than $1,000 or imprisoned for not more than one year, or both. The Commission shall make its determination on reasonable cause as promptly as possible and, so far as practicable, not later than one hundred and twenty days from the filing of the charge or, where applicable under subsection (c) or (d), from the date upon which the Commission is authorized to take action with respect to the charge.

(c) State or local enforcement proceedings, notification of State or local authority; time for filing charges with Commission; commencement of proceedings. In the case of an alleged unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no charge may be filed under subsection (a) [(b)] by the person aggrieved before the expiration of sixty days after proceedings have been commenced under the State or local law, unless such proceedings have been earlier terminated, provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law. If any requirement for the commencement of such

proceedings is imposed by a State or local authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate State or local authority.

(d) State or local enforcement proceedings; notification of State or local authority; time for action on charges by Commission. In the case of any charge filed by a member of the Commission alleging an unlawful employment practice occurring in a State or political subdivision of a State which has a State or local law prohibiting the practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, the Commission shall, before taking any action with respect to such charge, notify the appropriate State or local officials and, upon request, afford them a reasonable time, but not less than sixty days (provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective day of such State or local law), unless a shorter period is requested, to act under such State or local law to remedy the practice alleged.

(e) Time for filing charges; time for service of notice of charge on respondent; filing of charge by Commission with State or local agency. A charge under this section shall be made within one hundred

and eighty days after the alleged unlawful employment practice occurred and notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter, except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

(f) Civil action by Commission, Attorney General, or person aggrieved; preconditions; procedure; appointment of attorney; payment of fees, costs, or security; intervention; stay of Federal proceedings; action for appropriate temporary or preliminary relief pending final disposition of charge; jurisdiction and venue of United States courts; designation of judge to bear and determine can; assignment of case for hearing; expedition of case; appointment of master.

(1) If within thirty days after a charge is filed with the Commission or within thirty days after

expiration of any period of reference under subsection (c) or (d), the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission may bring a civil action against any respondent not a government, governmental agency, or political subdivision named in the charge. In the case of a respondent which is a government, governmental agency, or political subdivision, if the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission shall take no further action and shall refer the case to the Attorney General who may bring a civil action against such respondent in the appropriate United States district court. The person or persons aggrieved shall have the right to intervene in a civil action brought by the Commission or the Attorney General in a case involving a government, governmental agency, or political subdivision. If a charge filed with the Commission pursuant to subsection (b) is dismissed by the Commission, or if within one hundred and eighty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d), whichever is later, the Commission has not filed a civil action under this section or the Attorney General has not filed a civil action in a case involving a government, governmental agency, or political subdivision, or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission, or the Attorney General in

a case involving a government, governmental agency, or political subdivision, shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge (A) by the person claiming to be aggrieved or (B) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, to intervene in such civil action upon certification that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsections (c) or (d) of this section or further efforts of the Commission to obtain voluntary compliance.

(2) Whenever a charge is filed with the Commission and the Commission concludes on the basis of a preliminary investigation, that prompt judicial action is necessary to carry out the purposes of this Act [title], the Commission, or the Attorney General in a case involving a government, governmental agency, or political

subdivision, may bring an action for appropriate temporary or preliminary relief pending final disposition of such charge. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with rule 65 of the Federal Rules of Civil Procedure. It shall be the duty of a court having jurisdiction over proceedings under this section to assign cases for hearing at the earliest practicable date and to cause such cases to be in every way expedited.

(3) Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this title [42 USCS §§ 2000e et seq.]. Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district m which the respondent has his principal office. For purposes of sections 1404 and 1406 of title 28 of the United States Code, the judicial district m which the respondent has his principal office shall in all cases be considered a district m which the action might have been brought.

(4) It shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

(5) It shall be the duty of the judge designated pursuant to this subsection to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited. If such judge has not scheduled the case for trial within one hundred and twenty days after issue has been joined, that judge may appoint a master pursuant to rule 53 of the Federal Rules of Civil Procedure.

(g) Injunctions; affirmative action; equitable relief; accrual of back pay; reduction of back pay; limitations on judicial orders. If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay (payable by

the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice), or any other equitable relief as the court deems appropriate. Back pay liability shall not accrue from a date more than two years prior to the filing of a charge with the Commission. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable. No order of the court shall require the admission or reinstatement of an individual as a member of a union, or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual was refused admission, suspended, or expelled, or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex, or national origin or in violation of section 704(a) [42 USCS § 2000e-3(a)].

(h) Provisions of 29 USCS §§ 101 et seq. not applicable to civil actions for prevention of unlawful practices. The provisions of the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes," approved March 23, 1932 (29 U.S.C. 101-115), shall not apply with respect to civil actions brought under this section.

(i) Proceedings by Commission to compel compliance with judicial orders. In any case in which an employer, employment agency, or labor organization fails to comply with an order of a court issued in a

civil action brought under this section, the Commission may commence proceedings to compel compliance with such order.

(j) Appeals. Any civil action brought under this section and any proceedings brought under subsection (i) shall be subject to appeal as provided in sections 1291 and 1292, title 28, United States Code.

(k) Attorney's fee, liability of Commission and United States for costs. In any action or proceeding under this title [42 USCS §§ 2000e et seq.] the court, in its discretion, may allow the prevailing party, other than the Commission or the United States, a reasonable attorney's fee as part of the costs, and the Commission and the United States shall be liable for costs the same as a private person.
(July 2, 1964, P.L. 88-352, Title VII, § 706, 78 Stat. 259- Mar. 24, 1972, P.L. 92-261, § 4, 86 Stat. 104.)

D. 50 USCS.

50 USCS Appx §§ 501-590. Soldiers' and Sailors' Civil Relief Act of 1940 (SSCRA).

1. 50 USCS Appx §§ 510. Purpose; suspension of enforcement of civil liabilities.

In order to provide for, strengthen, and expedite the national defense under the emergent conditions which are threatening the peace and security of the United States and to enable the United States the

more successfully to fulfill the requirements of the national defense, provision is hereby made to suspend enforcement of civil liabilities, in certain cases, of persons in the military service of the United States in order to enable such persons to devote their entire energy to the defense needs of the Nation, and to this end the following provisions are made for the temporary suspension of legal proceedings and transactions which may prejudice the civil rights of persons in such service during the period herein specified over which this Act [50 USCS Appx. §§ 501 et seq.] remains in force.
(Oct. 17, 1940, ch 888, § 100, 54 Stat. 1179.)

2. 50 USCS Appx §§ 511. Definitions.

(1) The term "person in military service", the term "persons in military service", and the term "persons in the military service of the United States", as sued in this Act [50 USCS Appx. §§ 501-590], shall include the following persons and no others: All members of the Army of the United States, ... The term "military service", as used in this Act [50 USCS Appx. §§ 501-590], shall signify Federal service on active duty either with any branch of the service heretofore referred to or mentioned as well as training and education under the supervision of the United States preliminary to induction into the military service. The terms 'active service" or "active duty" shall include the period during which a person in military service is absent from duty on account of sickness, wounds, leave, or other lawful cause.

(2) The term "period of military service", as used in this Act [50 USCS Appx §§ 501-590], means, in the case of any person, the period beginning on the date on which the person enters active service and ending on the date of the person's release from active service or death while in active service, but in no case later than the date this Act [50 USCS Appx §§ 501 et seq.] ceases to be in force.

(3) The term "person", when used in this Act [50 USCS Appx. §§ 501 et seq.], with reference to the holder of any right alleged to exist against a person in military service or against a person secondarily liable under such right, shall include individuals, partnerships, corporations, and any other forms of business association.

(4) The term "court", as used in this Act [50 USCS Appx. §§ 501 et seq.], shall include any court of court of competent jurisdiction of the United States or of any State, whether or not a court of record.

3. 50 USCS Appx §§ 512. Territorial application; *jurisdiction of courts; form of procedure.*

(1) The provisions of this Act [50 USCS Appx. §§ 501 et. seq.] shall apply to the United States, the several States and Territories, the District of Columbia, and all territory subject to the jurisdiction of the United States and to proceedings commenced in any court therein, and shall be enforced through the usual forms of procedure obtaining in such courts or under such regulations as may be by them prescribed.

(2) When under this Act [50 USCS Appx. §§ 501 et seq.] any application is required to be made to a court in which no proceeding has already been commenced with respect to the matter, such application may be made to any court.

4. 50 USCS Appx §§ 516. Extension of benefits to persons ordered to report for induction or military service.

Any person who has been ordered to report for ..., and any member of the reserve component of the Armed Forces who is ordered to report for military service shall be entitled to such relief and benefits during the period beginning on date of receipt of such order and ending on the date upon which such member reports for military service or the date on which the order is revoked, whichever is earlier."

5. 50 USCS Appx §§ 521. Stay of proceedings where military service effects conduct thereof.

At any stage thereof any action or proceedings in any court in which a person in military service is involved, either as plaintiff or defendant, during the period of such service or within sixty days thereafter may, in the discretion of the court in which it is pending, on its own motion, and shall, on application to it by such person or some person on his behalf, be stayed as provided in this Act [50 USCS Appx. §§ 501 et seq.], unless, in the opinion of the court, the ability of the plaintiff to prosecute the action or the defendant to conduct his defense is not materially affected by reason of his military service.

6. 50 USCS Appx §§ 523. Stay or vacation of execution of judgments, attachments, etc.

In any action or proceeding commenced in any court against a person in military service, before or during the period of such service, or within sixty days thereafter, the court may, in its discretion, on its discretion, on its own motion, or on application to it by such person or some person on his behalf shall, unless in the opinion of the court the ability of the defendant to comply with the judgment or order entered or sought is not materially affected by reason of his military affected by reason of his military service-

(a) Stay the execution of any judgment or order entered against such person, as provided in this Act [50 USCS Appx. §§ 501 et seq.]; and

(b) Vacate or stay any attachment or garnishment of property, money, or debts in the hands of another, whether before or after judgment as provided in this Act [50 USCS Appx. §§ et seq.].

7. 50 USCS Appx §§ 525. Statutes of limitations as affected by period of service.

"The period of military service shall not be included in computing any period now or hereafter to be limited by any law, regulation, or order for the bringing of any action or proceeding in any court ... by or against any person in military service..., whether such cause of action or the right or the right or privilege to institute such action or proceeding

shall have accrued prior to or during the period of such service..."

8. 50 USCS § 1801 (1996) Electronic Surveillance, Definitions.

d. "Sabotage" means activities that involve a violation of chapter 105 of title 18, US Code, [18 USCS § 2151 et seq.]

k. "Aggrieved person" means a person who is the target of an electronic surveillance or any other person whose communications or activities were subject to electronic surveillance.

m. "Person" means any individual, including any officer or employee of the Federal Government, or any group, entity association.

III. STATE STATUTES

A. CALIFORNIA PENAL CODE

1. California Penal Code, § 205. Aggravated Mayhem.

A person is guilty of aggravated mayhem when he or she unlawfully, under circumstances manifesting extreme indifference to the physical or psychological well-being of another person, intentionally causes permanent disability or disfigurement of another or deprives a human being of a limb, organ, or member of his or her body... it is not necessary to prove an

intent to kill. Aggravated Mayhem is a felony... imprisonment for life with the possibility of parole.

2. California Penal Code, § 207. Kidnapping defined.

(a) every person who forcibly, or by any other means of instilling fear, steals or takes, or holds, detains, ... and carries the person into another country, state, or county, or into another part of the same county, is guilty of kidnapping.

(c) Every person who forcibly, or by any means of instilling fear, takes or holds, detains, or arrests any person, with a design to take the person out of this state, ... or who hires, persuades, entices, decoys, or seduces by false promises, misrepresentations, or the like, any person to go out of this state, or to be taken out of this state, or removed there from, for the purpose and with the intent to sell that person into slavery or involuntary servitude, or otherwise to employ that person for his or her own use, ore to the use of another without the free will and consent of that persuaded person, ids guilty of kidnapping.